

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today is not binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GARY L. GOCKEL, KATHY L. PRATSCHNER,
and STEVEN M. HAMMOCK

Appeal No. 1997-2915
Application 08/087,227

ON BRIEF

Before GARRIS, WALTZ, and KRATZ, Administrative Patent Judges.
GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of claims 8 through 15 and 17 through 21 which are all of the claims pending in the application.

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The subject matter on appeal relates to a multilayer polymeric shaped structural shell having a top layer which is striped in appearance and is textured. This appealed subject matter is adequately illustrated by independent claim 8, the sole independent claim on appeal, a copy of which taken from the appellants' brief is appended to this decision.

The references relied upon by the examiner as evidence of obviousness are:

Altman et al. (Altman) 1978	4,067,071	Jan. 10,
Guerra et al. (Guerra) 1990	4,892,700	Jan. 9,

All of the appealed claims stand rejected under 35 U.S.C. § 103 as being unpatentable over Guerra or Altman.

These rejections cannot be sustained.

As correctly indicated by the appellants in their brief, neither of the applied references contains any teaching or suggestion of a top layer which is "striped in appearance" as required by the appealed claims. Concerning this feature, it is the examiner's position that "[a]pplicants['] claimed color variations [i.e., the "striped in appearance" feature recited in independent claim 8] are obvious design choices to effect a pleasing appearance" (answer, page 4).

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The fatal deficiency of the examiner's position is that it is utterly devoid of evidentiary support. Indeed, on the record of this appeal, no evidence at all has been proffered by the examiner that the "striped in appearance" feature under consideration was even available in the prior art. Stated differently, the reference evidence adduced by the examiner fails to support the proposition that the feature was available in the prior art as a choice much less the proposition that such a choice would have been obvious.

The rejection based upon the Guerra reference is further defective in that, as indicated in the appellants' brief, the reference contains no teaching or suggestion of the here claimed feature of a "textured" top layer. In rebuttal, the examiner states "[i]t is the position of the Examiner that one having ordinary skill in the art would be able to . . . texturize the top acrylic layer [of Guerra] . . . depending on the desired effect" (answer, page 5). Whether an ordinarily skilled artisan "would be able" to texturize Guerra's top layer is not determinative of obviousness under 35 U.S.C. § 103. In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984). In order to establish the obviousness of a

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modification, the prior art must have suggested the desirability of the modification. Id. The Guerra reference contains no suggestion that a textured top layer was even known in the prior art much less desirable.

In summary, as reflected by our discussion above, the section 103 rejections advanced by the examiner on this appeal are impermissibly based upon unsupported generalities rather than facts. In re Freed, 425 F.2d 785, 787, 165 USPQ 570, 571 (CCPA 1970). It follows that we cannot sustain the examiner's rejections of the appealed claims as being unpatentable over Guerra or Altman.

The decision of the examiner is reversed.

REVERSED

	Bradley R. Garriss)	
	Administrative Patent Judge)	
)	
)	
)	
	Thomas A. Waltz)	BOARD OF
PATENT	Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
	Peter F. Kratz)	
	Administrative Patent Judge)	

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APPENDIX

8. A multilayer polymeric shaped structural shell having a top layer of acrylic resin composition or polycarbonate resin composition which is striped in appearance and is textured and an ABS composition underlying layer obtained by

extruding a first acrylic or polycarbonate resin composition of a first color to form a first extrudate,

extruding a second acrylic or polycarbonate resin composition of a second color to form a second extrudate,

mixing said first extrudate and said second extrudate in a manner effective to form a mixed extrudate having a striped appearance,

coextruding said mixed extrudate and a third ABS composition to form a sheet comprised of a top layer comprised of said mixed extrudate and having a striped appearance, and at least one underlying layer of said third composition,

passing said sheet between at least two rollers, with the roller in contact with said top layer being textured to impart texturing to said top layer, and

thermoforming said sheet into a structural shell having a striped and textured top layer.